IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 23RD NOVEMBER 2006 / 2ND AGRAHAYANA 1928

CRL.A.No. 2121 of 2005(C)

SC.NO.2094/2002 of ADDL. SESSIONS COURT FOR ABKARI CASES, KOTTARAKKARA

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APPELLANT: ACCUSED

UNNIKRISHA PILLAI S/0 VELU PILLAI,
MAHESH BHAVAN, PADINJATTUMAKARA MURI,
KOTTARAKKARA.

BY ADV. SRI.D.JAYACHANDRAN

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 23/11/2006 ALONG WITH CRL.APPEAL NO. 2122 OF 2005
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL.M.A.NO.21886 OF 2005 IN CRL.APPEAL NO.2121 OF 2005.

DISMISSED

23.11.2006 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NOS. 2121 & 2122 OF 2005

Dated this the 23rd day of November, 2006

JUDGMENT

The appellant in both these appeals is one and the same. Crl.Appeal No.2121 of 2005 is filed against the conviction and sentence passed by the Additional Sessions Court for Abkari cases, Kottarakkara in Sessions Case No.2094 of 2002. Crl.Appeal No. 2122 of 2005 is filed against the conviction and sentence passed by the same court in Sessions Case No.77 of 2002. The impugned judgments were delivered on the same day, that is, 11.11.2005.

2. In both the cases, the appellant faced trial for the offence punishable under Section 8 (1) and (2) of the Abkari Act. On the basis of the evidence adduced by the prosecution in Sessions Case No.2094 of 2002, the trial court found the appellant guilty of the offence alleged against him, convicted him thereunder and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of six months. Likewise, the appellant

was found guilty of the offence alleged in Sessions Case No.77 of 2002 and a similar conviction and sentence as in Sessions Case No.2094 of 2002 were ordered against him. The appellant has challenged the conviction and sentence ordered against him in both the Sessions Cases.

3. The prosecution case in Sessions Case No.2094 of 2002 is that on 8.4.1999 at 11 A.M., PWs.1 and 4, the Preventive Officers attached to the Excise Range Office, Kottarakkara while on patrol duty found the appellant passing through the railway station junction to Neeleswaram road in front of S.N.D.P. building at Padinjattinkara with 7 litres of arrack in a 10 litre white jerry can. PW.1 arrested the appellant, seized the contraband articles and registered Crime No.38 of 1999. Ext.P1 seizure mahazar was prepared in the presence of independent witnesses and sample was taken from the contraband articles and sent for chemical analysis. Ext.P6 chemical analysis report showed that the sample contained about 26.85% by volume of ethyl alcohol. To prove the case against the appellant, the prosecution examined PWs.1 and 4 and relied on Ext.P1 to P6 and MO.1 can containing 7 litres of arrack. On closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. The appellant denied the allegations levelled against him and stated that the officials had falsely implicated him.

4. The prosecution case in Sessions Case No.77 of 2002 is that on 20.3.2000 at 4 p.m. while PWs.3 and 4, the police constable and Sub Inspector of Police respectively of Kottarakkara Police Station found the appellant in possession of 6 litres of arrack in a 10 litre jerry can. The appellant was arrested, the contraband articles were seized under Ext.P1 mahazar and Crime No.207 of 2000 was registered against the appellant. PW.4 conducted investigation and filed the final charge. Samples taken from the contraband articles were sent for chemical examination. Ext.P5 chemical analysis report showed that the samples contained 22.90% and 22.74% by volume of ethyl alcohol. To prove the case against the appellant, the prosecution examined PWs.1 to 4 and relied on Exts.P1 to P5 and MOs.1 to 3. The appellant when questioned under Section 313 Cr.P.C. denied commission of any offence as alleged by the prosecution.

5. The main contention raised by the learned counsel appearing for the appellant in both these appeals is that the official witnesses had not complied with the mandatory provisions contained in Section 36 of the Abkari Act while seizing the contraband articles and taking samples from them. According to the learned counsel, the officials had not given any evidence before the court below as to where the samples and the residue

were kept before producing the same before the court. Another contention of the learned counsel is that there were no independent witnesses to prove the case against the appellant and to support the prosecution case with regard to seizure of the contraband articles. PWs.2 and 3 in Sessions Case No.2094 of 2002 and PWs.1 and 2 in Sessions Case No.77 of 2002 did not support the prosecution case. The appellant in Crl.Appeal No.2122 of 2005 had a further case that sufficient opportunity was not given to him to explain his case when questioned under Section 313 Cr.P.C.

6. The trial court relying on the oral and documentary evidence adduced by the prosecution in both the cases found the appellant guilty of the offence alleged against him. The trial court found that the evidence of the official witnesses in both the cases would show that the appellant was found in possession of arrack and he was arrested on the spot. The trial court also found that the material objects were seized and samples were taken in the presence of independent witnesses. The chemical analysis reports also showed that the sample contained alcohol. PW.2 in Sessions Case No.2094 of 2002 even denied his signature in Ext.P1 mahazar and the court below found that the reason for doing so was that PW.2 and the appellant were employees of a toddy shop contractor. The independent witnesses in Sessions Case No.77 of 2002 also denied their signature in

Ext.P1 mahazar. However, the trial court relied on the evidence of the official witnesses and the documentary evidence produced by the prosecution to come to the conclusion that the appellant was guilty of the offence alleged against him. Further, it was found by the court below that the case suggested to the official witnesses cannot be taken as a ground to hold that they have not complied with the provisions of the Abkari Act or Section 100 Cr.P.C. and that no prejudice was caused to the appellant on that aspect.

7. Considering the entire facts and circumstances and the evidence adduced in both the cases, this Court is of the view that the trial court rightly accepted the prosecution evidence in proving the case against the appellant. The defence failed to prove that the officials have violated any of the provisions of the Abkari Act. Further, the appellant was involved in more than one excise case. In the above circumstances, this Court is of the view that the conviction and sentence ordered by the court below in both the Sessions Cases require no interference. However, taking into account the fact that the appellant was already convicted in Sessions Case No.2094 of 2002, it is only proper for this Court to consider whether the appellant can be given the benefit of Section 427 Cr.P.C. Admittedly, the appellant faced trial for the same offence in two Sessions Cases and the

evidence adduced in both the cases is more or less similar. Further, the appellant is aged 50. Taking into account the above aspects, it is ordered that the sentences passed by the Additional Sessions Court for Abkari Cases, Kottarakkara against the appellant in Session Case Nos.2094 of 2002 and 77 of 2002 shall run concurrently.

The Crl. Appeals are accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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